

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JARVIS LEE HILL, #16050-078

§

VS.

§

CIVIL ACTION NO. 4:12cv44
CRIMINAL ACTION NO. 4:09cr197(1)

UNITED STATES OF AMERICA

§

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Movant Jarvis Lee Hill, a prisoner confined at the Dalhart Unit in Dalhart, Texas, filed a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. The motion was referred for findings of fact, conclusions of law and recommendations for the disposition of the case.

On July 15, 2010, after pleading guilty pursuant to a written plea agreement, Movant was sentenced to 120 months' imprisonment for conspiracy to possess with intent to distribute cocaine base, in violation of 21 U.S.C. § 846. Movant filed a notice of appeal. The appeal is currently pending with the Fifth Circuit Court of Appeals. Movant filed the present motion on January 24, 2012.

A § 2255 motion will not be considered during the pendency of a direct appeal. *Jones v. United States*, 453 F.2d 351, 352 (5th Cir. 1972). Thus, Movant may not bring the present § 2255 motion because his direct appeal is pending. *Risby v. Wendt*, 112 Fed. Appx. 373 (5th Cir. 2004). He may initiate a new § 2255 proceeding after all direct appeals are completed.

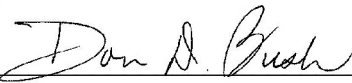
Recommendation

It is accordingly recommended that the present lawsuit be dismissed without prejudice.

Within fourteen (14) days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations contained in the report.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within fourteen days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

SIGNED this 26th day of January, 2012.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE